



January 5, 2000

Mr. John E. Richards
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 400
Dallas, Texas 75201-7388

OR2000-0037

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130573.

The Dallas City Plan, Inc. (the "Plan"), which you represent, received a request for the following information:

1. The monetary value of the office space furnished administrators and office personnel of the Dallas Plan by the City of Dallas
2. The monetary value of the pro bono city personnel on loan from the police and other departments.
3. Records, including monetary value, of contributions, personal corporate, and other entities for promoting and defining long range planning and other activities sanctioned under the authority of the City Council.

You maintain that the Plan is not a governmental body for purposes of the Public Information Act (the "act"), and request an opinion from this office as to the extent of the Plan's obligation to respond to the requestor.

The act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. A "governmental body" is defined as an entity that spends or is

supported in whole or in part by public funds. "Public funds" means funds of the state or of a governmental subdivision of the state. Gov't Code § 552.003(5).

You explain that the Plan is a private, nonprofit corporation that receives no funds from the City of Dallas (the "city") or from any other governmental entity. You do state, however, that the Plan occupies free office space in the Dallas City Hall. We conclude that by accepting free office space, the Plan is accepting public funds. See Attorney General Opinion MW-373 (1981) (concluding that foundation was subject to Public Information Act because it received office space and other public assistance from the University of Texas); see also Open Records Decision No. 228 (1979). However, we must still determine whether the Plan is actually being "supported" by these funds.

Decisions of this office have found an entity receiving public funds to be a governmental body under the act unless its relationship with the governmental body imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." See, e.g., Open Records Decision Nos. 602 (1992), 228 (1979). In Open Records Decision No. 602 (1992), this office examined the Dallas Museum of Art ("DMA"), which received partial funding from the City of Dallas (the "city") in exchange for the DMA's obligation to care for and preserve the city's art collection and to maintain, operate, and manage the art museum. The decision determined that the nature of the services the DMA provided the city could not be known, specific, or measurable. Thus, to the extent the DMA received the city's support, the DMA was a governmental body subject to the act. See Open Records Decision No. 602 at 5 (1992). Accordingly, only documents relating to those sections of the DMA that are supported by public funds were found to be public documents subject to the act. *Id.* Documents related to areas of the DMA that are not supported with public funds are not subject to the act. *Id.*

It appears that the free office space is the only public support that the Plan receives. Furthermore, you explain that Plan was not created by the city, nor is it controlled or subsidized in any way by the city. You also state that no one on your staff reports to or is supervised by anyone with the city. Based on these representations, we believe that the tangential support provided by the city is insufficient to bring *all* of the Plan's records within the scope of the act. However, in accordance with prior decisions, we conclude that the Plan is a "governmental body" within the meaning of the act to the extent that it receives support from the city. Thus, documents relating to the office space provided by the city are public records subject to the act. You explain that the Plan does not possess nor does it have access to any records relating to the monetary value of its office space. The act does not require a governmental body to make available information which does not exist nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 (1992), 362 (1983). The Plan must, nevertheless, make a good

faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 87 (1975); *see* Gov't Code § 552.353 (providing penalties for failure to permit access to public information). If, however, no responsive documents exist, you need not further respond to this request.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

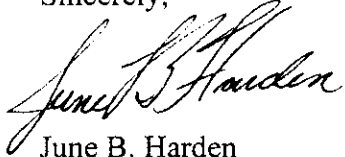
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

¹It appears, based on his communication with this office, that the requestor seeks information relating to the relationship between the Plan and the city. We believe such information could be available from the city.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 130573

cc: Mr. Roy A. Hudson
P. O. Box 781592
Dallas, Texas 75378-1592